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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------|-------------|----------------------|---------------------|------------------|
| 10/780,161 | 02/17/2004 | Christian Krebs | LINDE-5 (9978*9) | 1262 |
| 7590 | 09/13/2004 | | EXAMINER | |
| CONNOLLY BOVE LODGE & HUTZ | | | | LEWIS, AARON J |
| P.O. BOX 2207 | | | | |
| WILMINGTON, DE 19899-2207 | | | | |
| | | | | ART UNIT |
| | | | | PAPER NUMBER |
| | | | | 3743 |

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/780,161 | KREBS, CHRISTIAN | |
| | Examiner | Art Unit | |
| | AARON J. LEWIS | 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 February 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,8-10,15 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkin et al. ('675).

As to claim 1, Henkin et al. disclose a method for the metered administration of one or more therapeutically effective gases to a patient, comprising a step to remove harmful or undesired substances from the gas-carrying system or from parts of the gas-carrying system (col.5, line 66-col.6, line 11), characterized in that the step consists of purging with one or more other gases or gas mixtures and/or it consists of evacuation (col.5, lines 55-57).

As to claim 2, Henkin et al. disclose the following therapeutically effective gases: NO, CO or CO₂ mixtures used to stimulate breathing, H₂ mixtures, N₂O mixtures, SF₆ mixtures, nitrosoethanol, anesthetic gases. More specifically, Henkin et al. disclose the administration of anesthetic gases (col.6, line 13).

As to claim 8, Henkin et al. ('675) disclose that the purging or evacuation step is one of time-controlled, sensor-controlled and event controlled (Table IA). More specifically, line 1 of the table discloses the flush button to be depressed when the detachable circuit is seated; therefore, the purging step is event controlled.

As to claim 9, Henkin et al. ('675) disclose that the parts of the system to be cleared comprise feed lines, valves, tubing, dead spaces, and patient intake elements (col.5, line 66-col.6, line 11 and fig.1).

As to claim 10, Henkin et al. ('675) disclose a device for the metered administration of one or more therapeutically effective gases to a patient, comprising a device to remove harmful or undesired substances (col.5, lines 55-56 and line 66-col.6, line 11), characterized by one of a second gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas") and an evacuation line (130, 134,138,157) in addition to a first gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas").

As to claim 15, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-7,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkin et al. ('675) in view of Henkin et al. ('280).

With respect to claim 3, Henkin et al. ('675) is not specific as to the particular constituency of the flush/purge gas supplied during actuation of flush button (142); however, Henkin et al. ('280) teach the flush/purge gas to be oxygen via inlet tube (200 and col.5, lines 38-39 and col.6, lines 29-35).

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Inasmuch as the purge gas of Henkin et al. ('675) is employed to establish an initial pressure and volume within the patient circuit (col.6, lines 8-11), it would have been obvious to employ a breathable life sustaining gas such as oxygen because it would have been safe for a patient to breathe initially as taught by Henkin et al. ('280).

As to claim 4, Henkin et al. ('675) disclose that the purging or evacuation step is one of time-controlled, sensor-controlled and event controlled (Table IA). More specifically, line 1 of the table discloses the flush button to be depressed when the detachable circuit is seated; therefore, the purging step is event controlled.

As to claim 5, Henkin et al. ('675) disclose that the parts of the system to be cleared comprise feed lines, valves, tubing, dead spaces, and patient intake elements (col.5, line 66-col.6, line 11 and fig.1).

As to claim 6, Henkin et al. ('675) disclose the patient intake elements are selected from the group consisting of nosepieces and masks (508 and col.20, lines 54-55).

Claim 7 is substantially equivalent in scope to claim 3 and is included in Henkin et al. ('675) in view of Henkin et al. ('280) for the reasons set forth above with respect to claim 3.

As to claim 12, Henkin et al. ('675) teach a compressed gas connection (e.g. high pressure gas source).

As to claim 13, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

5. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkin et al. ('675) in view of Heim et al. ('924).

The difference between Henkin et al. and claim 11 is an express recitation of the inclusion of a flowmeter and pressure guage. It is submitted that the use of flowmeters and pressure gauges are commonplace on anesthesia machines and ventilators for the measurement of gas flow rates and the measurement of the pressure of gases being supplied to patients in the respiratory art and to include both sensors on the apparatus of Henkin et al. would have been obvious; otherwise, resort is had to Heim et al. in a ventilator system which teaches the use of both flowmeters and pressure gauges (fig.2).

As to claim 14, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant purging/flushing systems for the removal of undesirable gases.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
September 12, 2004